

SOUTH AFRICA / JUDGMENT

Davidson v Cough N.O. and Others (41962/2021) [2022] ZAGPJHC 1007 (20 December 2022)

[2022] ZAGPJHC 1007**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Twala M L

CASE / FILE NUMBER

41962/2021

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Policy**HEADNOTE:**

CLOSE
CORPORATION AND OPPRESSIVE CONDUCT
Company
– Close Corporation – Oppressive conduct –
Relief – Member's interest – Animosity
making
working relationship intolerable – Transfer of interest to
managing member ordered with fair payment in return
– Close
Corporations Act 69 of 1984, s 49.
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
LOCAL DIVISION, JOHANNESBURG
CASE
NO: 41962/2021

REPORTABLE: NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED.
20
December 2022
In

the matter between: SEAN
RIST DAVIDSON
APPLICANT
And
BRENDA
MEGAN COUGH N.O.
FIRST RESPONDENT
(Cited
in her capacity as the Executrix in
The
estate late David Cough)
BRENDA
MEGAN COUGH
SECOND RESPONDENT
(Identity
No: [...])
STAND
1231 LEISURE BAY CLOSE
CORPORATION
THIRD RESPONDENT
(Registration
No: 1999/023523/23)
STAND
1232 LEISURE BAY CLOSE
CORPORATION
FOURTH RESPONDENT
(Registration
No: 1998/012901/23)
THE
COMPANIES AND INTELLECTUAL
PROPERTY
COMMISSION
FIFTH RESPONDENT

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be the 20th of December 2022.

TWALA J

[1] The applicant, who is a holder of 50% member's interest in the third and fourth respondents respectively, launched this application before this Court seeking the Court to direct and order the respondents as follows:

1.1 the 50% member's interest in Stand 1231 Leisure Bay CC held by the late David Couch be transferred to the applicant;

1.2 the 25% member's interest in Stand 1232 Leisure Bay CC held by the late David Couch be transferred to the applicant and the second respondent proportionate to their membership in Stand 1232 Leisure Bay CC;

1.3 that the fifth respondent be directed to update its records in order to reflect:

1.3.1 that the applicant is the 100% member of Stand 1231 Leisure Bay CC;

1.3.2 that the second respondent is the 33.33% member of Stand 1232 Leisure Bay CC.

1.4 The first respondent be and is hereby ordered within 5 (five) days from the date of the order in 1.1 above, to take all steps and to do all things required of her to give effect to the order in 1.1 above.

1.5 In the event that the first respondent fails to comply with the order in 1.1 above and within 30 days, the sheriff for the district of Johannesburg is authorised to do all necessary and to sign all documents necessary to give effect to the prayer granted in 1.1.

1.6 Costs of the application.

1.7 Affording the applicant such further and or alternative relief as the above Honourable Court deems just in the circumstances.

[2] The second respondent is opposing this application in her capacity as the executrix in the estate of her late husband, the late David Couch ("the Deceased") who died on the 6th of October 2004, who at the time held 50% and 25% member's interest in the third and fourth respondents respectively and in her personal capacity as the holder of 25% member's interest in the fourth respondent. Furthermore, the first and second respondents in their respective capacities as stated herein have launched a counter application wherein they sought an order removing the applicant as a member of both the third and fourth respondents for his conduct which is deemed to be unfair, unjust, prejudicial and

inequitable towards the respondents. The respondents tender to pay the applicant the sum of R600 000 less whatever amounts are owed by him to the second, third and fourth respondents. In the alternative, the respondents sought an order for the winding up of both the third and fourth respondents.

- [3] For the sake of convenience, in this judgment I propose to refer to the parties as they are referred to in the main application. I will refer to the parties as the applicant and to the first and second respondents as the respondents and the third and fourth respondents as the corporations. However, I shall denote any other respondent by number where there is a special reference to that respondent. The third to the fifth respondents are not participating in these proceedings.
- [4] It is appropriate at this stage to mention that the respondents raised two points in limine in their papers. The first point in limine was the objection against the applicant for the late filing of its replying affidavit and answering affidavit to the respondents' counter application. However, at the commencement of the hearing, the respondents did not persist with the objection and submitted that it should be considered when dealing with the issue of costs.
- [5] On the second point in limine the respondents contended that the application is flawed since the daughters of the second respondent, who are the intestate heirs in the estate of the deceased were not cited and or joined in these proceedings. It was contended further that the daughters of the deceased together with the second respondent have a direct and substantial interest in the proceedings involving the estate of the deceased and should therefore have been joined in these proceedings. The relief sought by the applicant will impact adversely on the rights of the intestate heirs of the deceased. Furthermore, the applicant should have joined the Master of the High Court as well under whose control and supervision the estate of the deceased has been placed.
- [6] Counsel for the applicant contended that it was not necessary to join the daughters of the deceased in these proceedings for they are duly represented by the second respondent who is the executrix in the estate. Moreover, so the argument went, the daughters do not acquire any interest in the member's interest of the deceased in the corporations but it is the estate that has a right to the proceeds of the member's interest should there be a sale and or transfer of the member's interest. Furthermore, so it was contended, in terms of the Close Corporations Act, the applicant has a pre-emptive right to the deceased's members interest in the corporations.
- [7] It is trite that the executor or executrix in an estate, immediately after letters of executorship have been granted to him or her takes custody and under his or her control all the property, books and documents in the estate. Put differently, an executor or executrix, once appointed by the Master, assume the direct responsibility of the deceased estate and is accountable to the Master. The executor or executrix becomes the representative of the estate in all respects and is responsible in the performance of his or her duties to represent the estate in all matters including litigation for and or against the estate.

- [8] There is therefore no merit in the submission that the applicant should have joined the intestate heirs of the deceased because they have a direct and substantial interest in these proceedings. Their interests are represented by the second respondent who is herself a co-heir in the estate and an executrix appointed by the Master of the High Court to wind up the estate. Furthermore, even if the Master was cited as a party in these proceedings, it would not have made any difference for no order is sought against the Master and whatever orders that would be made which would affect the estate would be communicated to the Master by the executrix who is tasked and obliged in terms of the law to account to the Master on everything regarding the deceased estate she is appointed to wind up.
- [9] Counsel for the respondents submitted that there was a dispute of fact which was foreseeable before the institution of these proceedings with regard to the values of both the corporations. Since the parties could not agree on the value of the corporations, so it was contended, then the application should fail because the dispute in the value was foreseen before the institution of the motion proceedings.
- [10] The applicant submitted that the dispute in the value of the corporations is not material in the determination of the issues in this case. Moreover, so it was contended, the Court may determine the other principal issues and postpone the issue of valuation of the corporations and refer same to an independent third party to determine such valuation to be appointed by the South African Institute of Chartered Accountants (“SAICA”).
- [11] It has long been established that motion proceedings are designed for the resolution of legal issues based on common cause facts. Put differently, motion proceedings are to be decided on the papers and only on exceptional circumstances would the Court allow the hearing of oral evidence. In case there is a factual dispute between the parties which is foreseeable, then it is appropriate that action proceeding should be instituted unless the factual dispute is not real, genuine or bona fide.
- [12] The fundamental question in instances of this nature is whether there is a real dispute of fact which cannot be determined without the aid of oral evidence. Put differently, the question is whether the applicant is entitled to the relief on the facts stated by the respondent, together with the admitted or undisputed facts stated by the applicant.
- [13] In *Lombard v Droprop CC and Others* 2010 (5) SA 1 (SCA) the Supreme Court of Appeal state the following:

“para [29] It has long been recognised that a discretion resides in a high court, derived from the rules of court, to refer a disputed issue of fact which cannot be decided on affidavit for hearing of oral evidence regardless of whether the parties request it. The present rule is 6(5) (g). The overriding consideration in the exercise of the discretion is ensuring a just and expeditious decision. In short, in the case of a dispute of fact, the court must be persuaded that the hearing of evidence will be fair to the parties and will conduce to an effective and speedy resolution of the dispute and the overall application.”

- [14] In *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) AT 235 the Court stated the following:

"If the material facts are in dispute and there is no request for the hearing of oral evidence, a final order will only be granted on notice of motion if the facts as stated by the respondent together with the facts as alleged by the applicant that are admitted by the respondent, justify such an order".

- [15] It is noteworthy that the respondents in their counter application offer to buy the applicant's member's interest in both corporations at the same value of R600 000 as tendered by the applicant in his founding papers. It therefore baffles the mind whether there is a real, genuine and bona fide dispute of fact with regard to the quantum in this case. What is clear is that the quantum of the corporations becomes an issue and a dispute of fact when it is offered by the applicant to the respondents and not visa versa. To put it plainly, this Court is not satisfied that the respondents are raising a real, genuine and bona fide dispute of fact which is so material that it seriously affects the determination of the issues when considering the conspectus of the facts in this case. The other factual disputes concern the conduct of the parties and have no bearing on the determination of the parties' rights pursuant to s 35 of the Close Corporations Act>.
- [16] It is now apposite to give a brief synopsis of the foundational facts of this case which are largely undisputed. The applicant and the deceased, are the joint members in the corporations. The applicant holds 50% member's interest in both the corporations and the deceased held 50% and 25% respectively in both the corporations whilst the second respondent holds 25% only in the fourth respondent. Stand 1231 Leisure Bay CC is the owner of erf 1231 Leisure Bay, Hibiscus Coast, Kwa Zulu-Natal and Stand 1232 Leisure Bay CC is the owner of erf 1232 Leisure Bay, Hibiscus Coast, Kwa Zulu-Natal. The deceased died on the 6th of October 2004 and since then his estate has not been wound up although the second respondent has been appointed the executrix in the estate.
- [17] It is further not in dispute that Stand 1232 Leisure Bay, Hibiscus Coast, Kwa Zulu-Natal, is the property that is being used as a holiday home and or is rented out as a holiday house for outside guests to earn some income from it. Stand 1232 Leisure Bay CC is the close corporation that is used as a vehicle that manages the affairs of Stand 1232 Leisure Bay and Stand 1231 Leisure Bay CC manages the affairs of Stand 1232 Leisure Bay which has no dwelling built on it. The applicant is the managing member of both corporations which corporations were deregistered by the fifth respondent during the period 2010 and 2011 respectively and were only reinstated and or reregistered in March 2020.
- [18] It is further undisputed that the relationship between the applicant and the second respondent in both her personal capacity and her capacity as the executrix of the estate of the deceased is strained to the extent that they cannot speak to each other except through their attorneys. It is further common cause that the corporations do not have an association agreement and there is no other agreement that exists between the members which regulates their relationship. The strained relationship between the parties is what

necessitated the institution of these proceedings.

- [19] Before embarking on the discussion on the issues involved in this case, it is apposite that the relevant provisions of the Close Corporations Act, 69 of 1984 (“The Act”) are restated herein which read as follows:

“Section 34 Disposal of interest of insolvent member

- (1) Notwithstanding any provision to the contrary in any association agreement or other agreement between members, a trustee of the insolvent estate of a member of a corporation may, in the discharge of his duties, sell that member’s interest –
 - (a) To the corporation, if there are one or more member other than the insolvent member;
 - (b) To the members of the corporation other than the insolvent member, in proportion to their member’s interests or as they may otherwise agree upon; or
 - (c) Subject to the provisions of subsection (2), to any other person who qualifies for membership of a corporation in terms of section 29.
- (2) If the corporation concerned has one or more members other than the insolvent, the following provisions shall apply to a sale in terms of subsection (1)(c) of the insolvent member’s interest:
 - (a) The trustee shall deliver to the corporation a written statement giving particulars of the name and address of the proposed purchaser, the purchase price and the time and manner of payment thereof;
 - (b) For a period of 28 days after the receipt by the corporation of the written statement the corporation or the members, in such proportions as they may agree upon, shall have the right, exercisable by written notice to the trustee, to be substituted as purchasers of the whole, and not a part only, of the insolvent member’s interest at the price and on the terms set out in the trustee’s written statement; and
 - (c) If the insolvent member’s interest is not purchased in terms of paragraph (b), the sale referred to in the trustee’s written statement shall become effective and be implemented.

[20] Section 35 Disposal of Interest of Deceased Member

Subject to any other arrangement in an association agreement, an executor of the estate of a member of a corporation who is deceased shall, in the performance of his duties-

- (a) Cause the deceased member’s interest in the corporation to be transferred to a person who qualifies for membership of a corporation in terms of section 29 and is entitled thereto as legatee or heir or under a redistribution agreement, if the remaining member or members of the corporation (if any) consent to the transfer of the member’s interest to such person; or;

- (b) If any consent referred to in paragraph (a) is not given within 28 days after it was requested by the executor, sell the deceased member's interest –
- (i) To the corporation, if there is any other member or members than the deceased member;
- (ii) To any other remaining member or members of the corporation in proportion to the interests of those members in the corporation or as they may otherwise agree upon; or
- (iii) To any other person who qualifies for membership of a corporation in terms of section 29, in which case the provisions of subsection
- (2) of section 34 shall mutatis mutandis apply in respect of any such sale.”
- [21] It has now been settled that in interpreting a document or statute, the starting point is the words used and the context unless it would lead to some absurdity. Furthermore, in interpreting a statute it is necessary to consider the purpose for which it was enacted.
- [22] In *Tshwane City v Blair Atholl Homeowners Association* 2019 (3) SA 398 (SCA) the Supreme Court of Appeal stated the following:
- “Para 61 It is fair to say that this Court has navigated away from a narrow peering at words in an agreement and has repeatedly stated that words in a document must not be considered in isolation. It has repeatedly been emphatic that a restrictive consideration of words without regard to context has to be avoided. It is also correct that the distinction between context and background circumstances has been jettisoned. This court, in Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) ([2012] All SA 262; [2012] ZSCA 13), stated that the purpose of the provision being interpreted is also encompassed in the enquiry. The words have to be interpreted sensibly and not have an unbusinesslike result. These factors have to be considered holistically, akin to the unitary approach.*
- [23] It is apparent that the deceased died intestate and there is no association agreement in extant governing the relationship between the parties in the corporations. It is therefore for the executrix to follow the procedure as set out in s35(a) of the Act which provides for the transfer of the deceased member's interest to the heirs with the consent of the remaining members of the corporations. If such consent is not obtained within 28 days of the request of the executrix, then she should sell the member's interest of the deceased to the corporation or to the remaining members of the corporation. Section 35 (a) of the Act is clear plain and unambiguous and the second respondent, being the executrix in the deceased estate, has failed to comply with the requirements of the section.
- [24] If the executrix was not obliged or did not intend to transfer the member's interest of the deceased to any other person in accordance with s35(a) within 28 days of her assuming office, she should have requested the existing members of the corporations to lodge with the Registrar of the fifth respondent, in accordance with s15 of the Act, an amended founding statement designating her as a nominated official representing the deceased member in the corporations. However, the executrix has failed to do so. Even in these proceedings the executrix does not seek the consent of the remaining members to transfer the member's interest of the deceased to the heirs of the estate nor does she seek the approval of the

remaining members for the sale of the members' interest.

[25] Counsel for the respondents referred this Court to the case of *Livanos NO and Others v Oates and Others* 2013 (5) SA 165 (GSJ). The circumstances of the *Livanos* case are distinguishable from the present case in that in the *Livanos* case the executors of the

deceased estate wrote a letter to the remaining member requesting approval of the transfer of the deceased member's interest to his sole heir but such consent was refused. Furthermore, the executors wrote to the remaining member requesting his approval of the sale of the deceased member's interest but again such consent was refused. In the present matter the executrix has not sought the approval from the remaining members to transfer the member's interest to the heirs of the deceased nor has she sought approval of the sale of the member's interest.

[26] The provisions of s35 are clear and plain in that if the executrix does not transfer the member's interest and does not obtain consent from the remaining members of the corporations within the prescribed time limit, then she shall sell the member's interest in the corporations to the corporations or to any other remaining member or members of the corporations in proportion to the interest they hold in the corporations or as they may otherwise agree upon. It is my view therefore that, once the executrix fails to meet the provisions of s35 (a), it is obliged to follow the prescripts of s35(b) which prescribes that the member's interest be sold to the corporation or the remaining member or members of the corporation.

[27] It is disingenuous of the second respondent to now say one of her daughters and her partner are prepared to pay more for the deceased member's interest in the corporations than that which is offered by the applicant. This has only surfaced in the answering affidavit and was never put to the applicant before these proceedings. Furthermore, it does not comply with the provisions of s34 which requires a written statement from the trustee, the executrix in this case, setting out the details and particulars of the name and address of the proposed purchaser, the purchase price and the time and manner of payment thereof. The executrix is silent about the names of the persons except to say it is one of her daughters and her partner and more especially the amount being offered to buy the member's interest in the corporations and the time and manner of effecting payment.

[28] Nothing turns in that the corporations were deregistered by the fifth respondent in 2010 and 2011 respectively. It is the responsibility and duty of all members of the corporation to comply with the regulation of the fifth respondent and both the applicant and the second respondent continued to operate the corporations as though nothing has happened. Furthermore, the deregistration of the corporations has no bearing on the performance of her duties as the executrix of the deceased estate. The inescapable conclusion is therefore that the second respondent was comfortable when she acted as the representative of the estate of the deceased in the corporations – hence she never bothered to perform her duties in terms of the provisions of s35 of the Act.

- [29] Nothing prevents the applicant as a remaining member of the corporations albeit with the second respondent in the fourth respondent from buying the interest of the deceased member in the corporations and is entitled to do so for he has a pre-emptive right in terms of the Act. The Act does not make the value attached to the corporation as the determining factor whether to sell to the corporation or to the remaining members or to third parties. It is therefore not open to the second respondent to suggest that her daughter and her partner should be given the option to buy the deceased interest in the corporations because they are offering more than the applicant and because she has the best interest of the deceased estate. It is the pre-emptive right of the remaining member or members of the corporations as provided by s35(b) which entitles the applicant to buy the deceased's interests in the corporations.
- [30] The provisions of s35(b) are clear in that the legislature intended that if the executor does not comply with the provisions of s35(a), the member's interest of the deceased should be offered or sold in the following sequence,
- (i) to the corporation, (ii) to any other remaining member of the corporation and (iii) to any other person who qualifies. If the intention of the legislature was that the member's interest could be disposed of by being offered or sold in the open market, it would not have listed these categories and nothing prevented it from saying so. I hold the view therefore that the purported offer to buy the deceased's interest in the corporations as alleged by the executrix by her daughter and its partner does not comply with the requirements of the Act and is a ruse only made to curtail the efforts of the applicant in resolving the problems that exist between the parties.
- [31] Furthermore, I am fortified in my view because, by and large, the relationship of members in close corporations goes beyond that of business partners. Usually in close corporations, members commonly play an active role in the management of the business and its affairs. It therefore makes absolute sense for the deceased member's interest to be sold to the corporation or to the remaining members to avoid bringing a total stranger into the business. It is my considered view therefore that the applicant is entitled to the transfer of the deceased member's interest in the third respondent and in proportion to the member's interest he holds in the fourth respondent.
- [32] Turning to the counter application of the second respondent, it is apparent that the relationship between the applicant and the second respondent has deteriorated so badly that they cannot hold meetings of the corporation since they only communicate with each other through their lawyers. The second respondent has stated categorically that it is not willing to be a member of the corporation together with the applicant, who as a managing member has abused his position and prejudiced her and the corporation's finances. The conduct of the applicant has made working with him in the future intolerable and unbearable. The applicant should be removed as member of the corporations and the second respondent offers to buy him out from both corporations failing which then the corporations should be liquidated.

- [33] Furthermore, the second respondent's complaint is that the applicant does not account to her with regard to the finances of the corporation and only approaches her when there is a shortfall and she is to contribute in order to pay for the expenses of the corporation. She and her family no longer enjoy the benefits for which the corporation was meant to provide for them as the applicant is using it as his fiefdom. As a result of the applicant's conduct, the corporation currently owes her an amount which is more than R100 000 which she has contributed towards its running expenses.
- [34] It is a trite principle that by becoming a shareholder in a company, that is, a member of a corporation in the present case, a person undertakes by his contract to be bound by the decisions of the prescribed majority of shareholders if those decisions are taken on the affairs of the company and are in accordance with the law even where such decisions adversely affect the rights of a minority shareholder, the second respondent in this case. Put in another way, a company is an independent and self-governing entity in which the minority has to abide by the will of the majority.
- [35] It is necessary to restate the provisions of the Act which are relevant for the purposes of the discussion that shall follow which are as follows:

"36. Cessation of membership by order of Court

- (1) On application by any member of a corporation a Court may on any of the following grounds order that any member shall cease to be a member of the corporation:
- (a)
- (b) That the member has been guilty of such conduct as taking into account the nature of the corporation's business, is likely to have prejudicial effect on the carrying on of the business;
- (c) That the member so conducts himself in matters relating to the corporation's business that it is not reasonably practicable for the other member or members to carry on the business of the corporation with him; or
- (d) That circumstances have arisen which render it just and equitable that such member should cease to be a member of the corporation:

- [36] Section 49 of the Act provides the following regarding unfairly prejudicial conduct by members of the corporation:

"49. Unfairly prejudicial conduct

- (1) Any member of a corporation who alleges that any particular act or omission of the corporation or of one or more other members is unfairly prejudicial, unjust or inequitable to him, or to some members including him, or that the affairs of the corporation are being conducted in a manner unfairly prejudicial, unjust or inequitable to him, or to some members including him, may make an application to a Court for an order under this section.

(2) If on any such application it appears to the Court that the particular act or omission is unfairly prejudicial, unjust or inequitable as contemplated in subsection (1), or that the corporation's affairs are being conducted as so contemplated, and if the Court considers it just and equitable, the Court may with a view to settling the dispute make such order as it thinks fit, whether for regulating the future conduct of the affairs of the corporation or for the purchase of the interest of any member of the corporation by other members thereof or by the corporation."

[37] The second respondent is not a member of the third respondent except that she is the executrix in the estate of the deceased who has an interest in the third respondent. She is therefore not in a position to launch proceedings to remove a remaining member of that corporation. It is noteworthy as well that the second respondent did not persist with its prayer to liquidate both corporations. I will therefore not detain myself with the application to remove the applicant in relation to the third respondent.

[38] The purpose of s49 of the Act is to provide relief to a member of oppressive conduct by empowering the Court to order the sale of the corporation's asset in order to enable the member who is being prejudiced to be paid out for his interest and thereby to bring termination of his membership in the corporation. Put differently, it empowers the Court to make orders with a view to settling the dispute between the members of the corporation if it is just and equitable to do so. It does not require the Court to determine who is right or wrong between the parties, but it is for a party to establish that a

particular conduct is unfairly prejudicial, unjust or inequitable to it or that the business of the corporation is conducted in a manner that is unfairly prejudicial or unjust or inequitable.

[39] In *Gatenby v Gatenby and Others* [1996] 2 All SA 33 at 338 b-e: which was quoted with approval by Beshe J in *Lawrence Edmund James v TVR Construction CC and Others* [2014] ZAECELLC 3 (10 June

2014) the Court stated the following:

"The object of section 49 is to come to the relief of the victim of oppressive conduct. The section gives the court the power to make orders 'with a view to settling the dispute' between the members of a close corporation if it is just and equitable to do so. to this end the court is given a wide discretion. It may 'make such order as it thinks fit', within the framework of either 'regulating the future conduct of the affairs of the corporation' or 'the purchase of the interest of any member of the corporation by other members thereof or by the corporation'. these are far reaching powers. One member can be compelled to purchase the interest of another at a fair price, whether he wants to or not."

[40] In my judgment, there is a lot of animosity between the parties to the extent that all trust between them has been destroyed and lost. The second respondent has unequivocally testified that it is not practical and in fact it is intolerable and unbearable for her to work with the applicant in the future. She has indicated that she has been excluded by the applicant from the day to day running of the corporation. In essence, she has no intimate

knowledge of the business of the corporation. In contrast, the applicant testified that all the financial disputes have now been settled between the parties and that there is no reason for the corporations to be liquidation for they are both solvent.

- [41] Now that the issue of liquidating the corporations as one of the prayers has been abandoned by the second respondent, I can find no reason which prevents this Court that, in order to achieve the principle of just and equitability, it should oblige a member to remain a co-member of a corporation against her will in circumstances where this is unfair or oppressive to her. The second respondent is a member holding a minority interest in the fourth respondent and has not been involved in the day to day running of the business. It is just and equitable to release her from the oppressive conduct of the majority interest holder in the corporation than to force her to remain if in her view she cannot work with the majority member. Furthermore, it is my respectful view that the business of the corporation will continue if it is left in the hands of the applicant for he has been the managing member of the corporation.
- [42] It should be recalled that the business of the fourth respondent is that of a holiday house which is used by both the families of the applicant and the respondent if it is not rented out to other people. Besides the discomfort of not gaining access to the holiday home, the second respondent, has to bear the expenses of running the affairs of the corporation and the applicant does not account to her. I am therefore of the respectful view that it is just and equitable that she be relieved from the oppressive conduct of the majority interest holder.
- [43] There is a dispute between the parties regarding the amount of R113 000 that the second respondent claims it is owed to her and the corporation by the applicant and that dispute cannot be resolved in these papers. This claim is assailed by the applicant and has invited the second respondent to issue summons in order for the matter to be ventilated properly at the correct forum. It is therefore for the second respondent to pursue that matter in the relevant proceedings.
- [44] The value of the member's interest in both corporations has been estimated by the applicant as R600 000 which amount he offered to pay to respondents. In its counter claim the second respondent also placed the amount of R600 000 as the value of the corporations. I can find no reason why this value should not be accepted as the correct value of the corporations when both parties accepted it.
- [45] In the circumstances, the following order is made:
1. The 50% member's interest in Stand 1231 Leisure Bay CC held by the late David Couch be transferred to the applicant;
 2. The 25% member's interest in Stand 1232 Leisure Bay CC held by the late David Couch be transferred to the applicant;

3. The 25% member's interest in Stand 1232 Leisure Bay CC held by the second respondent be transferred to the applicant;
4. The applicant to pay to the respondents a sum of R600 000 for the transfer of the member's interest;
5. The fifth respondent is directed to update its records in order to reflect:
 - 5.1 that the applicant is the 100% member of Stand 1231 Leisure Bay CC;
 - 5.2 that the applicant the 100% member of Stand 1232 Leisure Bay CC.
6. The first and second respondents be and are hereby ordered within 5 (five) days from the date of the order in 1; 2 and 3 above, to take all steps and to do all things required of her to give effect to the order in 1; 2 and 3 above.
7. In the event that the first and second respondents fail to comply with the order in 1; 2 and 3 above and within 30 days, the sheriff for the district of Johannesburg is authorised to do all necessary and to sign all documents necessary to give effect to the prayer granted in 1; 2 and 3.
8. The first and second respondents to pay the costs of the application.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing:

24th October 2022

Date of Judgment:

20th December 2022

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/davidson-v-cough-no-and-others-unknown-topic-agpjhc-2022--6a3ea5183b1caa912980f479>

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